

104TH CONGRESS
1ST SESSION

H. R. 1747

To amend the Public Health Service Act to permanently extend and clarify malpractice coverage for health centers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 1995

Mrs. JOHNSON of Connecticut (for herself, Mr. WYDEN, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend the Public Health Service Act to permanently extend and clarify malpractice coverage for health centers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Federally Supported Health Centers Assistance Act of
6 1995”.

7 (b) REFERENCE.—Except as otherwise expressly pro-
8 vided, whenever in this Act an amendment or repeal is
9 expressed in terms of an amendment to, or repeal of, a

1 section or other provision, the reference shall be consid-
2 ered to be made to a section or other provision of the Pub-
3 lic Health Service Act.

4 **SEC. 2. PERMANENT EXTENSION OF PROGRAM.**

5 (a) IN GENERAL.—Section 224(g) (42 U.S.C.
6 233(g)) is amended by striking the last sentence of para-
7 graph (3).

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 224(k)(1)(A) (42 U.S.C.
10 233(k)(1)(A)) is amended by striking “each of the
11 fiscal years 1993, 1994, and 1995” and inserting
12 “each fiscal year”.

13 (2) Section 224(k)(2) (42 U.S.C. 233(k)(2)) is
14 amended by striking “each of the fiscal years 1993,
15 1994, and 1995” and inserting “each fiscal year”.

16 **SEC. 3. CLARIFICATION OF COVERAGE.**

17 Section 224(g)(1) (42 U.S.C. 233(g)(1)) is amend-
18 ed—

19 (1) in the first sentence, by striking “officer,
20 employee, or contractor” and inserting “officer, gov-
21 erning board member, or employee of such an entity,
22 and any contractor”; and

23 (2) in the second sentence, by inserting after
24 “officer,” the following “governing board member,”.

1 **SEC. 4. COVERAGE FOR SERVICES FURNISHED TO INDIVID-**
2 **UALS OTHER THAN CENTER PATIENTS.**

3 Section 224(g)(1) (42 U.S.C. 233(g)) is amended—

4 (1) by redesignating paragraph (1) as para-
5 graph (1)(A); and

6 (2) by adding at the end thereof the following:

7 “(B) The deeming of any entity or officer, gov-
8 erning board member, employee, or contractor of the
9 entity to be an employee of the Public Health Serv-
10 ice under subparagraph (A) shall apply with respect
11 to services provided—

12 “(i) to all patients of the entity, and

13 “(ii) subject to subparagraph (C), to indi-
14 viduals who are not patients of the entity.

15 “(C) Subparagraph (B)(ii) applies to services
16 provided to individuals who are not patients of an
17 entity if the Secretary determines, after reviewing an
18 application submitted under subparagraph (D), that
19 the provision of the services to such individuals—

20 “(i) benefits patients of the entity and gen-
21 eral populations that could be served by the en-
22 tity through community-wide intervention ef-
23 forts within the communities served by such en-
24 tity;

25 “(ii) facilitates the provision of services to
26 patients of the entity; or

1 “(iii) are otherwise required under an em-
2 ployment contract (or similar arrangement) be-
3 tween the entity and an officer, governing board
4 member, employee, or contractor of the entity.”.

5 **SEC. 5. APPLICATION PROCESS.**

6 (a) APPLICATION REQUIREMENT.—Section 224(g)(1)
7 (42 U.S.C. 233(g)(1)) (as amended by section 4) is fur-
8 ther amended—

9 (1) in subparagraph (A), by inserting “and sub-
10 ject to the approval by the Secretary of an applica-
11 tion under subparagraph (D)” after “For purposes
12 of this section”; and

13 (2) by adding at the end thereof the following:

14 “(D) The Secretary may not deem an entity or
15 an officer, governing board member, employee, or
16 contractor of the entity to be an employee of the
17 Public Health Service under subparagraph (A), and
18 may not apply such deeming to services described in
19 subparagraph (B)(ii), unless the entity has submit-
20 ted an application for such deeming to the Secretary
21 in such form and such manner as the Secretary shall
22 prescribe. The application shall contain detailed in-
23 formation, along with supporting documentation, to
24 verify that the entity, and the officer, governing
25 board member, employee, or contractor of the entity,

1 as the case may be, meets the requirements of sub-
2 paragraphs (B) and (C) of this paragraph and that
3 the entity meets the requirements of paragraphs (1)
4 through (4) of subsection (h).

5 “(E) The Secretary shall make a determination
6 of whether an entity or an officer, governing board
7 member, employee, or contractor of the entity is
8 deemed to be an employee of the Public Health
9 Service for purposes of this section within 30 days
10 after the receipt of an application under subpara-
11 graph (D). The determination of the Secretary that
12 an entity or an officer, governing board member,
13 employee, or contractor of the entity is deemed to be
14 an employee of the Public Health Service for pur-
15 poses of this section shall apply for the period speci-
16 fied by the Secretary under subparagraph (A).

17 “(F) Once the Secretary makes a determination
18 that an entity or an officer, governing board mem-
19 ber, employee, or contractor of an entity is deemed
20 to be an employee of the Public Health Service for
21 purposes of this section, the determination shall be
22 final and binding upon the Secretary and the Attor-
23 ney General and other parties to any civil action or
24 proceeding. Except as provided in subsection (i), the
25 Secretary and the Attorney General may not deter-

1 mine that the provision of services which are the
2 subject of such a determination are not covered
3 under this section or are not within the scope of em-
4 ployment or responsibility of the entity or its offi-
5 cers, governing board members, employees, or con-
6 tractors.

7 “(G) The Secretary, for good cause shown, may
8 reverse a determination under subparagraph (E).
9 The decision of the Secretary to reverse such a de-
10 termination shall be made on the record after oppor-
11 tunity for a full and fair hearing. Any such reversal
12 by the Secretary shall apply only after the entity re-
13 ceives notice of such reversal and shall only apply to
14 acts and omissions occurring after the date on which
15 such notice was received.”.

16 (b) APPROVAL PROCESS.—Section 224(h) (42 U.S.C.
17 233(h)) is amended—

18 (1) by striking the matter preceding paragraph
19 (1) and inserting the following: “The Secretary may
20 not approve an application under subsection
21 (g)(1)(D) unless the Secretary determines that the
22 entity—”; and

23 (2) by striking “has fully cooperated” in para-
24 graph (4) and inserting “will fully cooperate”.

1 **SEC. 6. TIMELY RESPONSE TO FILING OF ACTION OR PRO-**
2 **CEEDING.**

3 Section 224 (42 U.S.C. 233) is amended by adding
4 at the end thereof the following:

5 “(l)(1) If a civil action or proceeding is filed in a
6 State court against any entity described in subsection
7 (g)(4) or any officer, governing board member, employee,
8 or any contractor of such an entity for damages described
9 in subsection (a), the Attorney General, within 15 days
10 after being notified of such filing, shall make an appear-
11 ance in such court and advise such court as to whether
12 the Secretary has determined under subsections (g) and
13 (h), that such entity, officer, governing board member,
14 employee, or contractor of the entity is deemed to be an
15 employee of the Public Health Service for purposes of this
16 section with respect to the actions or omissions that are
17 the subject of such civil action or proceeding. Such advice
18 shall be deemed to satisfy the provisions of subsection (c)
19 that the Attorney General certify that an entity, officer,
20 governing board member, employee, or contractor of the
21 entity was acting within the scope of their employment or
22 responsibility.

23 “(2) If the Attorney General fails to appear in State
24 court within the time period prescribed under paragraph
25 (1), upon petition of any entity or officer, governing board
26 member, employee, or contractor of the entity named, the

1 civil action or proceeding shall be removed to the appro-
2 priate United States district court. The civil action or pro-
3 ceeding shall be stayed in such court until such court con-
4 ducts a hearing, and makes a determination, as to the ap-
5 propriate forum or procedure for the assertion of the claim
6 for damages described in subsection (a) and issues an
7 order consistent with such determination.”.

8 **SEC. 7. APPLICATION OF COVERAGE TO MANAGED CARE**
9 **PLANS.**

10 Section 224 (42 U.S.C. 223) (as amended by section
11 6) is amended by adding at the end the following:

12 “(m)(1) An entity or officer, governing board mem-
13 ber, employee, or contractor of an entity described in sub-
14 section (g)(1) shall, for purposes of this section, be deemed
15 to be an employee of the Public Health Service with re-
16 spect to services provided to individuals who are enrollees
17 of a managed care plan if the entity contracts with such
18 managed care plan for the provision of services.

19 “(2) Each managed care plan which enters into a
20 contract with an entity described in subsection (g)(4) shall
21 deem the entity and any officer, governing board member,
22 employee, or contractor of the entity as meeting whatever
23 malpractice coverage requirements such plan may require
24 of contracting providers for a calendar year if such entity
25 or officer, governing board member, employee, or contrac-

1 tor of the entity has been deemed to be an employee of
 2 the Public Health Service for purposes of this section for
 3 such calendar year. Any plan which is found by the Sec-
 4 retary on the record, after notice and an opportunity for
 5 a full and fair hearing, to have violated this subsection
 6 shall upon such finding cease, for a period to be deter-
 7 mined by the Secretary, to receive and to be eligible to
 8 receive any Federal funds under titles XVIII or XIX of
 9 the Social Security Act.

10 “(3) For purposes of this subsection, the term ‘man-
 11 aged care plan’ shall mean health maintenance organiza-
 12 tions and similar entities that contract at-risk with payors
 13 for the provision of health services or plan enrollees and
 14 which contract with providers (such as entities described
 15 in subsection (g)(4)) for the delivery of such services to
 16 plan enrollees.’’.

17 **SEC. 8. COVERAGE FOR PART-TIME PROVIDERS UNDER**
 18 **CONTRACTS.**

19 Section 224(g)(5)(B) (42 U.S.C. 223(g)(5)(B)) is
 20 amended to read as follows:

21 “(B) in the case of an individual who nor-
 22 mally performs an average of less than 32½
 23 hours of services per week for the entity for the
 24 period of the contract, the individual is a li-
 25 censed or certified provider of services in the

1 fields of family practice, general internal medi-
2 cine, general pediatrics, or obstetrics and gyne-
3 cology.”.

4 **SEC. 9. DUE PROCESS FOR LOSS OF COVERAGE.**

5 Section 224(i)(1) (42 U.S.C. 233(i)(1)) is amended
6 by striking “may determine, after notice and opportunity
7 for a hearing” and inserting “may on the record deter-
8 mine, after notice and opportunity for a full and fair hear-
9 ing”.

10 **SEC. 10. AMOUNT OF RESERVE FUND.**

11 Section 224(k)(2) (42 U.S.C. 223(k)(2)) is amended
12 by striking “\$30,000,000” and inserting “\$10,000,000”.

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